



June 21, 2012

EX PARTE

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Special Access Rates for Price Cap Local Exchange Carriers
WC Docket No. 05-25

Dear Ms. Dortch:

This is to inform you that on June 20, 2012, the undersigned representing USTelecom met with Matthew Berry and Nick Degani, from the office of Commissioner Pai, in connection with the proceeding identified above.

During this meeting, I explained how USTelecom has repeatedly urged in the past that the Commission pursue mandatory data requests because competitive providers would be unlikely to voluntarily provide data essential to any meaningful examination of the competitiveness of this market. I noted that this has proved to be accurate, as the Commission staff on multiple occasions have identified the failure of competitive providers to respond to the multiple voluntary data requests, including describing this omission as an “obstacle[] in its efforts to gather the data it needs to make an informed decision on special access.”¹

I also explained how, in contrast, ILECs have provided extensive data in this record demonstrating robust competition for the provision of high-capacity services to business customers. In addition to providing data about their own services in response to the prior voluntary data requests, the ILEC industry has provided in the record extensive publicly available analyses concerning the highly competitive nature of the business market and the fact that legacy ILEC special access services are rapidly being displaced by newer, more robust technologies essential to supporting the expanding bandwidth needs of businesses.²

In light of the foregoing and the staff’s acknowledged “dearth” of data in the record demonstrating a problem with the existing triggers, I explained that it would be contrary to any principle of data-driven analysis for the Commission to change the ground rules mid-stream,

¹ Opposition of Federal Communications Commission to Petition for Writ of Mandamus, *In re COMPTel, et al.*, (D.C. Cir., Oct. 6, 2011) (attached).

² See, e.g., USTelecom 2009 Fact Report and 2010 Supplement (filed February 24, 2010) (WC Docket 05-25).

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particularly in a manner that only penalizes those entities that have provided data to the benefit of those which have not.

I also noted that a rush to judgment by the Commission here seemed perplexing given the nature of the pending pricing flexibility petitions currently under review. I explained that the markets for which Phase II pricing flexibility relief were being sought were extremely competitive, with AT&T demonstrating (and not a single commenter challenging) that there were 27 collocated competitors in the San Francisco/Oakland MSA and 17 in the San Antonio MSA. And I pointed out that Windstream's petition is seeking only Phase I relief in two of the three MSAs – thus, the proposed order would appear only to prohibit Windstream from *lowering* special access prices in these markets.

Finally, I discussed the types of information that needs to be included in a mandatory data request in order for the Commission to properly evaluate the competitiveness of the business services market. In this regard, I referred them to USTelecom's ex parte of December 1, 2010 in this docket.

Pursuant to Commission rules, please include this letter in the docket identified above.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn T. Reynolds". The signature is fluid and cursive, with the first name "Glenn" and last name "Reynolds" clearly distinguishable.

Glenn T. Reynolds

c: Matthew Berry
Nick Degani